



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 498

IN THE MATTER OF THE NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY, INC.

DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and The New England Mutual Life Insurance Company, Inc. ("The New England") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final Commission order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On August 9, 1993, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into allegations that The New England had violated the conflict of interest law, G.L. c. 268A. The Commission has concluded its inquiry and, on June 7, 1994, voted to find reasonable cause to believe that The New England violated G.L. c. 268A, §3.

The Commission and The New England now agree to the following findings of fact and conclusions of law:

1. The New England, a Massachusetts corporation, is the state's third largest life insurer. It employs 2,300 employees in its Boston office, and has approximately 3,000 agents nationwide at 85 general agencies.
2. The New England is a Massachusetts domiciled life insurer. As such, its activities are more comprehensively regulated by Massachusetts than by any other state.
3. The New England has a Government Relations Department whose responsibilities include monitoring Massachusetts legislation of interest to the company and presenting its position on such proposed laws to members of the legislature.
4. Between June 1988 and January 1991, Alvaro Sousa was the company vice president who served as the Massachusetts Government Relations officer. Within the Government Relations Department, Sousa reported to Vice President James Gallaher and Senior Vice President Gordon MacKay. The Government Relations Department also retained Joseph McEvoy as an outside legislative consultant for Massachusetts legislation. Gallaher, Sousa and McEvoy were all registered as legislative agents in Massachusetts.
5. In concert with the Life Insurance Association of Massachusetts ("LIAM"), The New England tracks, monitors, and lobbies on several hundred pieces of legislation per year that affects the insurance industry. On average, approximately ten bills are enacted each year into law. Among the proposed laws The New England was interested in between 1988 and 1991 were bills mandating various kinds of insurance coverage; bills requiring gender neutral premium rates; bills mandating premium discounts for non-smokers; bills seeking to provide greater privacy to insurance consumers; bills that would subject life insurance companies to the higher bank tax excise rate; bills allowing the Savings Bank Life Insurance industry to convert to stock companies and thereby compete more directly with insurance companies; and bills dealing with long term care.
6. Sousa's annual performance plans required him to lobby for the enactment of legislation beneficial to The New England, and for the defeat or modification of bills unfavorable to The New England. As part of his

lobbying responsibilities, Sousa's performance plans directed him to enhance existing favorable relations with government officials, and to establish new contacts with other government officials.

7. Consistent with his annual performance plans, Sousa developed strong, effective personal relationships with Massachusetts legislators.^{1/} The reason The New England lobbyists maintained or created these relationships was to give The New England effective access to legislators.

8. The New England's lobbyists believed that they used this access successfully. Department reports prepared by MacKay make clear that, in his view, many of the above described bills were either enacted or defeated due in part to the efforts of The New England's lobbyists. For example, in a November 1, 1989 memorandum entitled, "1989 Major Public Affairs Accomplishments", MacKay wrote:

Among other issues in Massachusetts we successfully lobbied AIDS; a possible tax increase; unisex; and two troublesome privacy bills, avoiding potential negative impact on the industry.

TNE also successfully lobbied the Massachusetts "fraudulent signature" bill, avoiding potential costly and duplicative problems. The bill would have required certification of a signature to change a beneficiary in all life policies.

TNE successfully led the LIAM industry effort to defeat the non-smoker rating bill by 98-46 roll-call vote in the House.

9. One way The New England's lobbyists created strong relationships with Massachusetts legislators was by entertaining them through meals, drinks, golf, sporting and theatrical events. This entertainment created or enhanced goodwill and personal relationships which, in turn, translated into effective access to the legislators.^{2/}

10. Between June 24, 1988 and November 14, 1989, The New England lobbyists and Government Relations personnel entertained individual Massachusetts legislators and aides with meals, drinks, golf and tickets worth \$50 or more on approximately 47 occasions.^{3/} In addition, on January 8, 1991, New England lobbyists helped host a testimonial dinner for a recently retired state legislator who had been regarded as "very helpful" to the insurance industry. Along with a number of other insurance companies, The New England presented the legislator with a \$404 set of golf clubs.^{4/} The total value of these gratuities and entertainment was approximately \$6,500.

11. On occasion, these meals were quite expensive, costing in the vicinity of \$100 per person. Frequently, the expenses of a legislator's spouse or guest were also covered. Many of these meals took place at out-of-state resort settings, including: Amelia Island, Florida; Newport, Rhode Island; Scottsdale, Arizona; and Stowe, Vermont. On at least 17 occasions, The New England provided free rounds of golf to Massachusetts legislators and legislative aides.

12. The following are examples of the entertainment The New England lobbyists provided to Massachusetts legislators:

(a) Cape Cod "Massachusetts Nights"

On June 30, 1988 and 1989, The New England Government Relations Department sponsored a "Massachusetts Night" for current and former Massachusetts state legislators at the Wequasset Inn, in Chatham, MA. The events consisted of a cocktail reception and dinner, including a clambake, \$45 bottles of wine, shrimp and oyster hors d'oeuvres and an open bar. The New England spent \$4,008 on this event in 1989, and \$2,558 in 1988. The cost per couple was approximately \$360 in 1989 and \$200 in 1988. The dinners were attended by New England lobbyists, Government Relations personnel, former legislators and current legislators and their guests. Based on records and testimony it appears four legislators attended in 1988 and seven legislators attended in 1989. Limousine transportation was provided to and from the event to some legislators in 1988 and 1989.

(b) Newport, Rhode Island

In late July 1989, the Council of State Governments held a meeting in Newport, Rhode Island. Numerous Massachusetts legislators attended the meeting. During this time, The New England sponsored and organized an event at the Belcourt Castle for attending legislators and lobbyists.^{5/} The event included a tour and mystery game

through the castle, a cocktail reception in the Gothic Ballroom, and dinner in the Italian banquet hall. Piano and violin music was provided throughout the evening. The total cost of the event was \$5,742.52, with a per couple cost of approximately \$152.00. At least five Massachusetts legislators and their guests attended this event.

(c) Amelia Island

During March 15, 1989 to March 21, 1989, Gallaher and Sousa attended a National Conference of Insurance Legislators conference at Amelia Island, Florida. According to their expense records, Sousa and Gallaher provided entertainment of \$50 or more in value to nine Massachusetts legislators at Amelia Island at a total cost of approximately \$741.71.^{6/} This entertainment included golf, meals, and drinks. Specifically, Sousa and Gallaher hosted three golf outings on two days, and a dinner at the Steak House in Fernandina Beach, FL.

13. General Laws c. 268A, §3(a) prohibits anyone from giving a state employee anything of substantial value for or because of any official act performed or to be performed by the state employee.

14. Massachusetts legislators and legislative aides are state employees.

15. Anything with a value of \$50 or more is of substantial value for §3 purposes.^{7/}

16. By giving individual Massachusetts legislators and legislative aides entertainment worth \$50 or more while each such legislator or aide was in a position to take official action on proposed legislation that affected The New England's financial interests (or had taken past official action), The New England's lobbyists and Government Relations officials gave those legislators and aides gifts of substantial value for or because of acts within their official responsibility performed or to be performed by them. In doing so, The New England's lobbyists and Government Relations officials violated G.L. c. 268A, §3(a).^{8/}

17. As a corporation, The New England acts through and is responsible for the conduct of its employees and agents. Therefore, The New England violated G.L. c. 268A, §3(a) by providing certain legislators and aides with free meals, golf, tickets and other entertainment.

18. The Commission is not aware of evidence that any of the foregoing gifts were given to legislators with the intent to influence any specific official act by them as legislators. The Commission is also unaware of evidence that the legislators, in return for gifts, took any official action concerning any proposed legislation which would have affected The New England. In other words, the Commission is aware of no evidence that there was a *quid pro quo*. However, even if the conduct of The New England's agents was only intended to create goodwill, it was still impermissible.

19. There are substantial mitigating factors. In early 1990, well before the Commission initiated its investigation, The New England promulgated new Public Affairs guidelines and established strict reporting procedures which prohibited its employees from offering anything valued at \$50 or more to a public official. These internal guidelines succeeded in bringing The New England's lobbying activities into compliance with the Massachusetts conflict of interest law. With the single exception noted above, The New England's lobbyists have not provided any Massachusetts legislator or aide with \$50 in entertainment on any occasion during the past 4 1/2 years. In addition, as a result of information developed during this investigation, the New England has voluntarily revised its guidelines to better ensure continued compliance with the conflict of interest law. The New England cooperated with the Commission throughout this investigation.

In view of the foregoing violations of G.L. c. 268A, §3(a), the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by The New England:

(1) that The New England pay to the Commission the sum of twenty thousand dollars (\$20,000.00) as a civil fine for violating G.L. c. 268A, §3(a);

(2) that The New England waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this agreement in any related administrative or judicial proceeding to which the Commission is or may be a party.

DATE: September 22, 1994

^{1/} According to Sousa's 1987 annual performance appraisal, "Mr. Sousa has shown an uncanny knack and ability to gain the respect and trust of a host of legislators and key staff persons."

^{2/} MacKay analogized lobbying legislators to the selling of insurance. He testified that it was very difficult to sell insurance to someone that you did not know. The likelihood of a successful sale, however, was greatly increased if the potential buyer was a relative, friend, or a referral. Likewise, the chance for successful lobbying efforts were improved by the existence of personal relationships with legislators.

^{3/} In arriving at the \$50 or more expense figure, the Commission included all expenses on a single day or a single conference attributable to a specific legislator. For example, dinner, a golf outing and drinks given to a single legislator during a three day conference might have each cost less than \$50, but if aggregated they equaled or exceeded \$50. In addition, where The New England paid for the expenses of a legislator's spouse, those expenses have been attributed to the legislator.

^{4/} As discussed in detail in paragraph 19, in early 1990, The New England adopted guidelines prohibiting gifts to public officials and halted its practice of providing public officials with entertainment valued at \$50 or more. These guidelines did not address gifts to former legislators, and thus did not prevent the unlawful gift of the golf clubs. The New England has since revised its entertainment guidelines to prohibit similar conduct in the future.

^{5/} At least one other insurance company contributed to the cost of this event.

^{6/} None of these gratuities individually exceeded \$50, but when aggregated over the course of the conference they exceeded \$50 for each of the nine legislators. Although the Commission first made specific mention that multiple gratuities given to an official during the course of a single conference would be aggregated in *In re John Hancock Mutual Life Insurance Company*, 1994 SEC ____ (issued March 24, 1994), the Commission announced in *Advisory No. 8* (published May 15, 1985) that a course of conduct of giving gratuities to a public official would be evaluated as to value.

^{7/} See *Commonwealth v. Famigletti*, 4 Mass. App. 584, 587 (1976); *EC-COI-93-14*.

^{8/} For §3 purposes, it is unnecessary to prove that the gratuities given were generated by some specific identifiable act performed or to be performed. As the Commission explained in *Advisory No. 8* (issued May 14, 1985):

[E]ven in the absence of any specifically identifiable matter that was, is or soon will be pending before the official, section 3 may apply. Thus, where there is no prior social or business relationship between the giver and the recipient, and the recipient is a public official who is in a position to use his authority in a manner which could affect the giver, an inference can be drawn that the giver was seeking the goodwill of the official because of a perception by the giver that the public official's influence could benefit the giver. In such a case, the gratuity is given for as yet unidentified "acts to be performed."

Specifically, §3 applies to generalized goodwill-engendering entertainment of legislators by private parties, even where no specific legislation is discussed. *In re John Hancock Mutual Life Insurance Company*, 1994 SEC _ (Hancock violated §3(a) by providing meals, golf and event tickets to legislators); *In re Flaherty*, 1991 SEC 498 (majority leader violates §3 by accepting six Celtics tickets from billboard company's lobbyists); *In re Massachusetts Candy and Tobacco Distributors, Inc.*, 1992 SEC 609 (distributors' association violates §3 by providing free day's outing [a barbecue lunch, golf or tennis, a cocktail hour and a clam bake dinner] worth over \$100 per person to over 50 legislators, their staffers and family members, with the intent of enhancing the distributors' image with legislators who were in a position to benefit the distributors).

Section 3 applies to meals and golf, including those occasions motivated by business reasons, for example, the so-called "business lunch". *In re U.S. Trust*, 1988 SEC 356.

Finally, §3 applies to entertainment gratuities of \$50 or more even in connection with educational conferences. *In re Stone and Webster*, 1991 SEC 522; *In re State Street Bank*, 1992 SEC 582.

On the present facts, §3 applies to entertainment of legislators by The New England lobbyists where the intent was generally to create goodwill and the opportunity for access, even though specific legislation was not discussed.